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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* SOMNATH BANIK and  
JAMES A. JOHANSON

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Appeal 2009-009234  
Application 09/514,489  
Technology Center 2600

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Before JOSEPH F. RUGGIERO, ALLEN R. MacDONALD, and  
THOMAS S. HAHN, *Administrative Patent Judges*.

HAHN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants invoke our review under 35 U.S.C. § 134(a) from the final rejection of claims 1, 2, 4-9, and 11-22. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

## STATEMENT OF THE CASE

### *Introduction*

Appellants claim a cordless telephone receiver and a base station transmitter system for communicating data. The transmitter has a coupled silence detector to identify pauses in voice traffic and to generate an interjection signal during pauses. A data injector on receiving an injection signal causes the transmitter to transmit data to the receiver.<sup>1</sup> Claim 1 is illustrative:

1. For use in communicating data over a voice channel between a transmitter of a base station and a receiver of a handset of a cordless telephone, a system comprising:
  - a silence detector, coupled to said transmitter, that identifies a pause in voice traffic that is to be transmitted over said voice channel and generates an interjection signal during said pause; and
  - a data injector, coupled to said silence detector, that receives said interjection signal and responds by causing said transmitter to transmit data to said receiver over said voice channel.

### *Rejections*

1. Claims 1, 2, 4-6, 8-9, 11-13, 15-19, 21, and 22 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kato (US 6,044,266; Mar. 28, 2000) and Kim (US 5,960,357; Sep. 28, 1999) (Ans. 3-4).<sup>2</sup>

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<sup>1</sup> See generally Spec. 4:4-11; 5:6-8.

<sup>2</sup> Claim 21 is not listed in the statement of rejection (Ans. 3), but claim 3 is discussed in the reasons for the rejections (Ans. 4). Further, Kim is not Footnote continued on next page

2. Claims 7, 14, and 20 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kato, Kim, and Walley (US 6,301,287 B1; Oct. 9, 2001) (Ans. 4-5).<sup>3</sup>

*Appellants' Contention*

Appellants pivotally contend that “Kato and Kim both fail to teach or suggest identifying a pause in voice traffic . . . and responding to the pause by causing a base station transmitter to transmit data to a cordless telephone receiver over the voice channel as recited in independent Claims 1, 8 and 15” (App. Br. 8-9 (emphasis added)). Appellants’ explicit contention is that “Kato provides no teaching or suggestion that data is transmitted **from** the base station **to** the mobile voice station” (App. Br. 9).

*Issue on Appeal*

Did the Examiner err in rejecting independent claims 1, 8, and 15 as being obvious because Kato fails to teach or suggest causing a base station transmitter to transmit data to a cordless telephone receiver?

ANALYSIS

*Claims 1, 8, and 15*

Appellants’ argument focuses on the contention that “Kato does not teach or suggest identifying a pause in voice traffic that is to be

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listed in the statement of rejection (Ans. 3), but Kim is discussed in the reasons for the rejection (Ans. 3-4). That claim 21 and Kim are not listed in the statement of rejection are considered to be harmless typographical errors.

<sup>3</sup> The statement of rejection cites to 35 U.S.C. § 103(e) instead of § 103(a), which is considered to be harmless typographical error.

transmitted over the voice channel and responding to the pause by **causing a base station transmitter to transmit data to a cordless telephone receiver over the voice channel** as recited in independent Claims 1, 8, and 15” (App. Br. 10).

The Examiner disagrees as to Kato failing to disclose the disputed subject matter, and identifies relying on “the second embodiment of Kato [as] teaching data transmission from the base station to the mobile voice station, stated from col. 8 line[] 35” (Ans. 5). Appellants respond (Reply Br. 2) by quoting Kato’s description of the second embodiment that is relied on by the Examiner:

A second embodiment of the present invention is described with reference to FIG. 5. The second embodiment can be used with a base station that does not currently perform VOX control, because the second embodiment adjusts the base station so that it will perform VOX control. Thus, down-link packet data communication can be performed by using a channel under the VOX control by performing VOX control at the base station a, as well as at the mobile voice station b. *The mobile data station c transmits packet data during the silent period.* The present invention requires a channel having silent periods as a channel under VOX control. Thus, a channel having a silent period is found and used by the present invention.  
(See Kato, column 8, lines 37-49. *Emphasis added.*)

Appellants, based on these disclosures, argues that “[p]acket data . . . is . . . transmitted by the mobile data station c to the base station in the second embodiment[.] (See Kato, column 8, lines 45-46.)” (Reply Br. 2-3)

Appellants conclude that “even if the base station in the second embodiment of Kato performs [Voice-Operated Transmission] VOX control, this provides no teaching [or] suggestion of the base station transmitting data to

the mobile voice station b” (Reply Br. 3). We agree. The Examiner erred in finding Kato teaches or suggests a base station transmitting data to a telephone receiver as claimed.

For the foregoing reasons, we do not sustain the obviousness rejection of claims 1, 8, and 15, and we do not sustain the rejection of the dependent claims 2, 4-6, 9, 11-13, 16-19, 21, and 22, which, *inter alia*, are asserted to be patentable because of the argument addressed *supra* for the respective independent base claims (App. Br. 11-14).

*Claims 7, 14, and 20*

These dependent claims, as identified *supra*, stand rejected as being obvious over Kato, Kim, and Walley (Ans. 4-5). Appellants again assert these claims are patentable because of the argument addressed *supra* for their respective independent base claims 1, 8, and 15 (App. Br. 14). We do not find Walley overcomes the Kato deficiency addressed *supra*. Accordingly, we agree with Appellants and do not sustain the rejection of these claims.

CONCLUSIONS

1. Appellants established that the Examiner erred in rejecting independent claims 1, 8, and 15 as being obvious.
2. On this record, claims 1, 2, 4-9, and 11-22 have not been shown to be unpatentable.

Appeal 2009-009234  
Application 09/514,489

ORDER

The Examiner's decision rejecting claims 1, 2, 4-9, and 11-22 is reversed.

REVERSED

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